

REMARKS

In an Office Action mailed on February 6, 2008, claims 1-36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Eilam in view of Huckins.

Limitations of dependent claim 2 have been incorporated into independent claim 1. It is respectfully submitted that the obviousness rejection of claim 2 over Eilam and Huckins is erroneous for at least the following reasons.

To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as the U.S. Supreme Court held, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

On page 10, the Office Action states that paragraph no. 21 of Eilam discloses the limitations of claim 2. However, Applicant respectfully submits that this finding is in error, as the cited language fails to disclose at least a parameter that defines a desired service characteristic to be provided by a media server configuration during periods of degraded service under an expected workload. In this regard, paragraph no. 21 fails to contain any disclosure related to a desired service characteristic during a period of degraded service. It is noted that paragraph no. 25 of Eilam describes a guarantee level, which may "be an upper bound on the percentage of time units in which a server that is needed . . . is not available for the customer." However, paragraph no. 25 likewise fails to contain any discussion regarding a desired service characteristic during a period of degraded service.

Huckins discloses streaming from a server computer and appears not to be relied by the Office Action for purposes of disclosing a performability parameter that defines a desired service characteristic to be provided by a media server configuration during periods of degraded service under an expected workload.

Thus, it is respectfully submitted that even if Eilam and Huckins could be hypothetically combined, the hypothetical combination of the references would not have led to the claimed subject matter, as neither reference discloses or suggests a parameter that defines a desired service characteristic during periods of degraded service, and the Office Action fails to provide a

plausible reason why it would have been obvious for one of skill in the art to derive the missing claim limitations. Therefore, Applicant respectfully submits that amended independent claim 1 overcomes the § 103 rejection.

The method of independent claim 11 recites receiving into a capacity planning system, at least one performability parameter that defines a service characteristic to be provided by a media server configuration during non-compliant periods of operation under an expected workload.

The Office Action states that paragraph no. 21 of Eilam purportedly discloses these limitations. In particular, on page 4, the Office Action states that these limitations are disclosed in paragraph nos. 21 and 22 of Eilam. However, Applicant respectfully submits that the language cited by the Office Action generally discusses mapping performance metrics to a range of servers but fails to disclose specifying at least one performability parameter that defines a service characteristic during a non-compliant period of operation. As discussed above, paragraph no. 25 of Eilam discloses a guarantee level. However, this guarantee level applies only to compliant periods and does not address the performance during a non-compliant period. Huckins fails to disclose the missing limitations. Based on the misapplication of Eilam to the claimed subject matter, it is respectfully submitted that the obviousness rejection is defective.

Therefore, it is respectfully submitted that the hypothetical combination of Eilam and Huckins would not have led to the subject matter that is set forth in claim 11.

The method of independent claim 22 has been amended to incorporate the limitations of dependent claim 27. In particular, as amended, claim 22 now recites that the capacity planning tool receives at least one performability parameter that defines a desired limit on the amount of continuous overload encountered by a media server configuration under an expected workload.

In the § 103 rejection of claim 27, the Office Action refers to paragraph no. 34 of Eilam. However, this cited language merely discloses server allocation by a resource manager 101 and fails to disclose any type of monitoring of the amount of continuous overload encountered by media server configuration or at least one performability parameter that defines a desired limit on such a continuous overload. Thus, for at least this reason, the § 103 rejection is defective, as Eilam does not disclose the subject matter contended by the Office Action. Huckins, which is relied on by the Examiner for purposes of disclosing streaming, does not discuss continuous overloads or a limit on a continuous overload.

Therefore, it is respectfully submitted that the hypothetical combination of Eilam and Huckins would not have led to the claimed subject matter.

Independent claim 30 has been amended to incorporate the limitations of dependent claim 33. In particular, as amended, claim 30 now recites that the defined service parameters include at least one performability parameter that defines a desired limit on the amount of continuous overload encountered by a media server configuration under the expected workload. As discussed above in connection with amended independent claim 22, the hypothetical combination of Eilam and Huckins would not have led to the claimed subject matter, as neither reference discloses a service parameter that includes at least one performability parameter that defines a desired limit on the amount of continuous overload encountered by a media server configuration, and the Office Action fails to provide a plausible reason why it would have been obvious for one of skill in the art to derive the missing claim limitations.

Similarly, as amended, the system of independent claim 36 includes a means for receiving at least one performability parameter that defines a desired limit on the amount of continuous overload encountered by at least one media server configuration and overcomes the § 103 rejection for at least the same reasons as independent claims 22 and 30.

The system of independent claim 44 includes a capacity planner that is operable to receive a generated workload profile for a server configuration under consideration and determine how many servers of the server configuration are needed to provide a media server solution, which has sufficient capacity for supporting the site's workload in compliance with the defined performability parameters that specify a desired limit on degradation of quality of service provided by the media server solution during periods of degraded service.

Applicant respectfully submits that the hypothetical combination of Eilam and Huckins would not have led to the invention that is set forth in claim 44. In this regard, neither reference discloses a performability parameter that specifies a desired limit on degradation of quality of service during periods of degraded service. As discussed above in connection with amended claim 1, Eilam discloses in paragraph no. 25 a guarantee level on a percentage of time units in which a server that is needed is not available. However, Eilam fails to contain any disclosure related to specifying a limit on the degradation of service during periods of degraded service. The Office Action on page 9 refers to paragraph no. 36 of Eilam and contends its discussion of a resource controlled algorithm discloses the claimed performability parameter. However, this

finding by the Examiner is in error, as Eilam fails to describe that the resource control algorithm specifies or receives a specification of a limit on performance on a degraded period of service. Huckins, which is relied on by the Office Action for purposes of generally disclosing streaming, also fails to disclose any such limit or parameter.

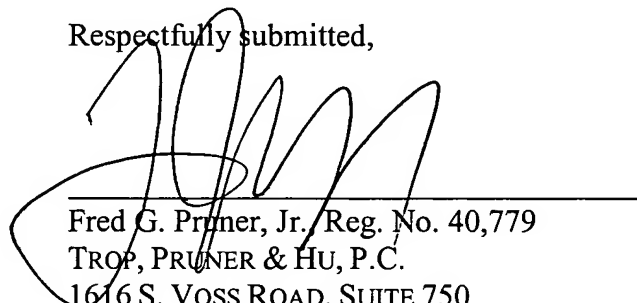
Therefore, Applicant respectfully submits that the § 103 rejection of claim 44 is defective, as the hypothetical combination of Eilam and Huckins would not have led to the claimed subject matter that is set forth in claim 44.

Dependent claims 3-10, 12-21, 23-26, 28, 29, 31, 32, 34, 35, 37-40, 42, 43, 45 and 46 are patentable for at least the same reasons as the claims from which they depend.

CONCLUSION

In view of the foregoing, Applicant respectfully requests withdrawal of the § 103 rejections and a favorable action in the form of a Notice of Allowance. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (HPC.0519US).

Respectfully submitted,



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